

JUL 13 2006

*Application No. 10/728,209**Amendment and Response to Office Action**REMARKS/ARGUMENTS*

Claims 1, 3, and 5 are currently pending. Claims 1 and 5 are amended herein and claim 2 has been canceled. No new matter has been added.

*Rejections under 35 U.S.C. § 102*

Claims 1 and 2 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Japanese Patent Specification No. 08-217519. Applicants respectfully traverse. Applicants submit that the '519 patent discloses a covering to protect concrete or construction material, and not a concrete-based flooring or wall covering with antibacterial activity as claimed in the instant application. Further, the '519 patent does not disclose any of the microbicidal agents required by claim 1. The Office Action alleges that the '519 patent teaches that phenols may be incorporated. However, the '519 patent does not disclose or suggest any particular phenols, and much less the phenol derivative recited in claim 1 of the present application. As such, the '519 patent is not an anticipatory reference and Applicants respectfully request the withdrawal of this rejection.

Claims 1 and 2 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Japanese Patent Specification No. 08-225415. Applicants respectfully traverse. The '415 patent does not disclose any of the microbicidal agents recited in claim 1. The Office Action alleges that the '415 patent teaches that phenols may be incorporated into concrete. However, the '415 patent does not disclose or suggest any particular phenol derivatives, and much less the phenol derivative recited in claim 1 of the present application. As such, the '415 patent also is not an anticipatory reference and Applicants respectfully request the withdrawal of this rejection.

*Rejections under 35 U.S.C. §103*

Claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Japanese Patent Specification No. 08-217519. Applicants respectfully traverse. As discussed above, the '519 patent does not teach the use of phenols derived from 2,4,4'-trichlorine-2'-hydroxyphenol, organotins, sodium o-phenylphenate tetrahydrate, or alkyl dimethyl benzylammonium chlorides as microbicidal agents in concrete-based floors or wall coverings as recited in the pending claims. As the '519 patent fails to teach elements specifically

*Application No. 10/728,209**Amendment and Response to Office Action*

recited in the pending claims, it cannot render obvious the claimed invention. Applicants respectfully request the withdrawal of this rejection.

Claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Japanese Patent Specification No. 08-225415. Applicants respectfully traverse. As discussed above, the '415 patent does not teach the use of phenols derived from 2,4,4'-trichlorine-2'-hydroxyphenol, organotins, sodium o-phenylphenate tetrahydrate, or alkyltrimethylbenzylammonium chlorides as microbicidal agents in concrete-based floors or wall coverings as recited in the pending claims. As the '415 fails to teach elements specifically recited in the pending claims, it cannot render obvious the claimed invention. Applicants respectfully request the withdrawal of this rejection.

Claims 1-3, and 5 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Russian Patent Specification No. 2101248 in view of Japanese Patent Specification No. 08-217519. Applicants respectfully traverse. As discussed above, the '519 patent does not teach each element of the claimed invention and the addition of the '258 patent does not cure this defect. The '248 discloses the use of alkylpolybenzyl-pyridine chloride in a protective coating applied to structures that are subject to biological attack. It does not teach concrete-based walls or floor coverings with microbicidal agents homogeneously distributed therein. Further, the '248 does not disclose the particular microbicidal agents recited in the pending claims. As the '248 lacks a teaching of claimed elements of the invention, its combination with the '519 patent does not produce invention of the instant application. Therefore, the combination of the '248 and '519 patents does not render obvious the claimed invention and Applicants respectfully request the withdrawal of this rejection.

Claims 1-3, and 5 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Soviet Union Patent Specification No. 1801957 in view of Japanese Patent Specification No. 08-217519. Applicants respectfully traverse. As discussed above, the '519 patent does not teach each element of the claimed invention. The addition of the '957 patent does not cure this defect. The '957 discloses a cement binder that includes quaternary ammonium salts and higher alkyl-carboxylates of 1-alkyl pyridinium to increase the range of bactericidal efficiency and reduce water absorption of the cement binder. The '957 does not teach concrete-based walls or floor coverings having microbicidal agents homogeneously


*Application No. 10/728,209**Amendment and Response to Office Action*

distributed therein to produce a long lasting effect, nor does it disclose any of microbicidal agents recited in the pending claims. As such, even if one were to combine the '519 and '957 patents, it would not result in the claimed invention. Therefore, Applicants respectfully request the withdrawal of this rejection.

*Conclusion*

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



Jennifer M. Duk, Reg. No. 52,838  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
180 North Stetson Avenue  
Chicago, Illinois 60601-6780  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Date: July 13, 2006